In the first place it should be noted that an order made under the Ordinance does not affect rights of property. It merely gives power to give possession. Whatever the order the court makes, the owner can assert his legal rights [see *Leicester* v. *Cherryman*.(4)]

The court may make its order as 'according to the conduct of the owner and the other circumstances of the case, seems just and fitting'. The 'other circumstances of the case' means in most cases the conduct of persons other than the owner.

As regards conduct, I think it can be said definitely that if the person seeking the order has been guilty of dishonesty, an order should not be made. In this respect I think the order made in the case reported, so far as it related to the property of Nadaison, is wrong. If in that case the defrauded pawnbroker had kept the goods, he could have counterclaimed with success if the thief had taken proceedings to recover them. In the cases where orders are made the conduct of the parties means therefore, in practice, negligence.

The common law is very tender to true owners whether negligent or not. Courts should not, in my opinion, make orders under this section except on terms where the true owner has failed to take reasonable care of his property.

It should be noted that the section merely gives power to order delivery. It does not confer power to give a judgment for a sum of money when the pawnbroker no longer has the property, as was done by Huggard C.J. in the case referred to.

It is a safe rule that in cases of doubt or difficulty an order should not be made."

Section 20 of the Pawnbrokers Enactment is complementary to section 407 of the Criminal Procedure Code (relating to disposal of property the subject of offences). Although section 407 gives the power to the court to make such an order as it thinks fit for the disposal of the property produced before it, in respect of pawned articles, the disposal must be subject to section 20 of the Pawnbrokers Enactment. It can only be delivered to the owner, but as Sir Charles Murray-Aynsley C.J. said in *Ho York Quin's* case (above), whatever order the court makes, the owner can exert his legal right and there are civil remedies available to the complainant which he could use to assert his right of recovery. It is not within the power of the court acting under section 20 to decide summarily involved questions of ownership of the jewelleries bought by the accused with money which she obtained dishonestly from the complainant.

In respect of exhibits 2 and 6, the ownership of the jewelleries having been fully established and having regard to the circumstances of the case, the order for the unconditional return of the pawned articles is proper and should, therefore, stand.

As regards exhibit 8A-B also and since the ownership of the articles has been established, but having regard to the circumstances of the pawning, there will be an order that these articles be returned to the complainant subject to payment of the amount lent but without profit.

In regard to the other exhibits, *i.e.* exhibits 3, 4, 5 and 7, since the complainant's ownership of the articles has not been established, the order of the learned president will be quashed and the exhibits will be delivered to the pawnbrokers after expiry of the period of one month from the date of this order.

*Order accordingly.*

Solicitors: *Shearn, Delamore & Co.*

## PARAMASIVAM v. PUBLIC PROSECUTOR

**[A.Cr.J. (Chang Min Tat J.) January 16, 1970]**

**[Ipoh — Criminal Appeal No. 40 of 1969]**

*Bribery and Corruption — Evidence — Prosecution witness — Explanation not acceptable to court — Defence asking to be allowed to cross-examine before impeachment — Court's refusal — Prevention of Corruption Act, 1961, s. 4(a).*

*Criminal Law and Procedure — Prosecution witness — Impeachment before defence being allowed to cross-examine.*

The appellant was convicted of an offence punishable under section 4(a) of the Prevention of Corruption Act, 1961 and sentenced to six months imprisonment. Against that conviction and sentence he appealed. The main ground of appeal was that in refusing to allow a prosecution witness, to be cross-examined, or to complete her evidence and in holding her completely discredited the learned president of the sessions court had erred.

**Held,** quashing the conviction and ordering a retrial: the defence should at all times be allowed the opportunity of defending within the well-established principles of adversary trial as against the inquisitorial system, and where there is *prima facie* a valid complaint, however thin it might be, it must be entertained.

MAGISTRATE'S CRIMINAL APPEAL.

*Dato' S. P. Seenivasagam* for the appellant.

*M. Mahalingam* (Deputy Public Prosecutor) for the respondent.

**Chang Min Tat J.:** The appellant was convicted of an offence punishable under section 4(a) of the Prevention of Corruption Act No. 42 of 1961 and sentenced to six months' imprisonment. Against that conviction and sentence he now appeals.

The main ground of appeal was that in refusing to allow a prosecution witness, a Raja Nurulaini, to be cross-examined, or to complete her evidence and in holding her completely discredited, the learned president had erred. Now what this particular witness said in evidence was to the effect that the accused was seated at his desk when 2 officers from the anti-corruption agency walked in and that one of the 2 officers suddenly stooped down and picked up something from the floor. At this stage in her evidence, the prosecuting officer applied to have her impeached on the strength of what were alleged to be material and relevant contradictions contained in her previous statement to the police. The application was allowed. The witness in answer to questions put to her by the learned president himself admitted that she made the statement concerned, but explained that the differences in that statement were occasioned by nervousness. Her explanation was not acceptable to the court. Thereupon, counsel for the accused asked that he be allowed to cross-examine the witness before the ruling was made and that in the interest of justice she should be allowed to complete her evidence. He was denied the opportunity asked for. The court then ruled that the witness was successfully impeached by the prosecution and that her evidence would not be considered.

Having read the statement made by the witness to the police, I am at a loss to understand why she was called in the first place. Her evidence did not appear to have any bearing at all. On the question of whether the accused was standing or seated when the anti-

corruption agency officers walked in, she was recorded as saying that she could not remember whether he was standing or sitting. She was then too occupied with her work to notice. What she told the court was to the effect that the accused was seated. This was apparently contrary to what other witnesses said.

I do not know what would be the effect on the case for the prosecution if she had been allowed to finish her examination or to be cross-examined. But now the defence complained that if her credit could have been saved by being so allowed, the defence might have been able to cast a doubt on the truth of the evidence of the other witnesses. It would not be quite right for me to speculate, at this stage, how valid such an objection would be, but clearly the defence should at all times be allowed the opportunity of defending within our well-established principles of adversary trial as against the inquisitorial system, and where there is *prima facie* a valid complaint, however thin it might be, it must in my view be entertained.

On this ground, Dato' Seenivasagam did not seriously contend for an acquittal. It is not necessary for me to hear the other grounds. There will therefore be an order quashing the conviction and setting aside the sentence and a further order for a retrial before another president.

*Conviction quashed. Retrial ordered.*

Solicitors: *S. Seenivasagam & Sons.*

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## *RE* L. Y. SWEE CO. SDN. BHD.

**[O.C.J. (Abdul Hamid J.) January 26, 1970]**

**[Kuala Lumpur — Companies (Winding-up) No. 10 of 1969]**

*Companies — Winding-up — Petition for — Appointment of counsel to represent company — Objection to — Directors' meeting — Minutes of, not entered in company's minute book — Companies Act, 1965, s. 156.*

*Companies — Private company — Directors — Meeting held in branch office outside State where registered office is situated — Whether valid — Companies Act, 1965, s. 145A.*

The company, a private limited company having its registered office in Kuala Lumpur and a branch office in Penang, has three directors. The petitioner is a director in Kuala Lumpur. The other two are directors in the branch office. The petition for winding-up was filed on October 16, 1969. The two Penang directors held a directors' meeting at Penang office on December 4, 1969 and appointed Mr. M.J. Mathew solicitor for the company. A preliminary objection was raised to Mr. Mathew appearing on behalf of the company at the hearing of the petition on two grounds: (1) The directors' meeting was not valid as it was held outside Selangor, the State where the registered office is situated. In support of this the petitioner relied on section 145A of the Companies Act. (2) The minutes of the meeting were not entered in the company's minute book which was kept by the company at its registered office.

**Held:** (1) the words "any meeting" in section 145A do not apply to a meeting of the directors of a company but only to general meetings;

(2) as the minutes of the directors' meeting had not been entered into the company's minute book within 14 days of the meeting, there was a contravention of section 156, and therefore the appointment of Mr. Mathew could not be deemed valid.

COMPANIES WINDING-UP.

*Chye Kooi Tet* for the petitioner.

*M. J. Mathew* for the company.

**Abdul Hamid J.:** At the hearing of the petition of Khoo Leong Kee (f) that L. Y. Swee Company Sdn. Bhd. be wound up under the provisions of the Companies Act, 1965, Mr. Chye Kooi Tet, counsel for the petitioner raised a preliminary objection to Mr. M. J. Mathew appearing on behalf of the company.

Mr. Law Joo Kuen, a director of L. Y. Swee Company Sdn. Bhd. filed a memorandum of retainer on 15th December 1969 stating that

"Mr. M. J. Mathew has been appointed by Messrs. L. Y. Swee Company Sdn. Bhd. abovenamed to act on its behalf in the proceedings."

The company is a private limited company. The registered office is situate at No. 74, Jalan Pudu, Kuala Lumpur. It has a branch office at No. 2 and 4, Che Em Lane, Penang.

There are three directors of the company. The petitioner is a director in the registered office in Kuala Lumpur, while Law Joo Kuen and Law Joo Hone are directors in the branch office in Penang.

The petition was filed on 16th October 1969. On 4th December 1969, the two Penang directors held a directors' meeting at Penang office. The petitioner was absent. At this meeting, Mr. M. J. Mathew was appointed solicitor for the company.

An affidavit was filed by the petitioner on 29th December 1969 objecting to the appointment of Mr. Mathew. Another affidavit was filed by one Chiew Keng, secretary of L. Y. Swee Co. Sdn. Bhd. on 31st December 1969, affirming that a meeting was held outside the State of Selangor and that the minutes of the aforesaid meeting were not entered in the company's minute book which is kept by the company in the registered office at Kuala Lumpur. A counter affidavit was filed by Law Joo Kuen, one of the Penang directors denying that there was any irregularity in the appointment.

Mr. Chye Kooi Tet is relying on two grounds in support of his objection —

(a) that the directors' meeting was not valid as it was held outside the State of Selangor, the State where the registered office is situated;

(b) that the minutes of the meeting were not and have not as yet been entered in the company's minute book which is kept by the company at the registered office.

Mr. Chye Kooi Tet refers to section 145A of the Act in support of his first ground. Section 145A is a new section added by Act 21 of 1969 which came into effect on 23rd March 1969. It reads —

"145A. Where any meeting (including an adjourned meeting) is required to be held under this division it shall be held in the State (of the Federation) where its registered office is situated."

The question which the court has to determine is the effect of this new section. Does it apply to any meet-